

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EARL O'BLACK,

Plaintiff,

v.

JEFFREY BEARD, et al.,

Defendants.

Civil Action No. 08-280 Erie

**MEMORANDUM JUDGMENT ORDER**

\_\_\_\_\_ Plaintiff's civil rights complaint was received by the Clerk of Court on October 14, 2008 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [52], filed on August 19, 2009, recommends that: (1) the Medical Defendants' Motion to Dismiss [43] be granted in part and denied in part; (2) the Commonwealth Defendants' Motion to Dismiss [46] be granted in part and denied in part; (3) the Motion to Dismiss or in the Alternative for Summary Judgment filed on behalf of Defendants McCollim, Loveland, Bash and Simmons [49] be granted; and (4) the claims against unnamed Defendants "Jane/John Doe," "John Doe 3," "John Doe 4," "Orthopedic John Doe," and "Counselor John" be dismissed in their entirety for failure to identify and serve said Defendants. The parties were allowed ten (10) days from the date of service in which to file objections. Service was made on Plaintiff by certified mail at his current address of record, and on the Defendants. No objections were filed. After de novo review of the complaint and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 10<sup>th</sup> day of September, 2009;

IT IS HEREBY ORDERED that:

(1) the Medical Defendants' Motion to Dismiss [43] is DENIED with respect to the Plaintiff's Eighth Amendment claim premised on the

Medical Defendants' alleged failure and/or refusal to timely provide the Plaintiff with an Arizona brace for his left ankle; in all other respects, said motion is GRANTED;

(2) the Commonwealth Defendants' Motion to Dismiss [46] is DENIED with respect to the Plaintiff's Eighth Amendment claim against Defendant Skunda premised on Defendant Skunda's alleged failure and/or refusal to timely provide the Plaintiff with an Arizona brace for his left ankle; in all other respects, and as to all other Commonwealth Defendants, said motion is GRANTED; and

(3) the Motion to Dismiss or in the Alternative for Summary Judgment filed on behalf of Defendants McCollim, Loveland, Bash and Simmons [49] is GRANTED.

IT IS FURTHER ORDERED, pursuant to this Court's authority under the Prison Litigation Reform Act, that Plaintiff's claims against unnamed Defendants "Jane/John Doe," "John Doe 3," "John Doe 4," "Orthopedic John Doe," and "Counselor John" are hereby DISMISSED in their entirety inasmuch as the Plaintiff has failed to identify and serve said Defendants within 120 days in accordance with the requirements of Rule 4(m) of the Federal Rules of Civil Procedure. As a result, the only claim remaining in this case is the Plaintiff's Eighth Amendment claim against Defendants Maxa, Sherbine, and Skunda regarding their alleged failure and/or refusal to timely provide the Plaintiff with an Arizona brace for his left ankle.

The Report and Recommendation of Chief Magistrate Judge Baxter [52], dated August 19, 2009, is adopted as the opinion of this Court.

s/ SEAN J. McLAUGHLIN

Sean J. McLaughlin  
United States District Judge

cc: All parties of record.  
United States Magistrate Judge Baxter